

**PT 98-28**

**Tax Type: PROPERTY TAX**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>OREGON VETERANS OF</b>	)		
<b>FOREIGN WARS POST 8739, INC.</b>	)	<b>Docket #</b>	<b>95-71-9</b>
<b>Applicant</b>	)		
	)	<b>Parcel Index #</b>	<b>18-16-04-254-003</b>
<b>v.</b>	)		
	)		
<b>THE DEPARTMENT OF REVENUE</b>	)	<b>Barbara S. Rowe</b>	
<b>OF THE STATE OF ILLINOIS</b>	)	<b>Administrative Law Judge</b>	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Kari A. Vanderzyl, Williams & McCarthy for Oregon Veterans of Foreign Wars (herein after the "Applicant").

Synopsis:

The hearing in this matter was held at 100 W. Randolph Street, Chicago, Illinois on August 25, 1997, to determine whether or not Ogle County Parcel Index No. 18-16-04-254-003 qualified for exemption during the 1995 assessment year.

Harry Unzicker, bar manager and Quartermaster during the taxable year in question, was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1995 assessment year; secondly, whether the applicant is a patriotic organization; and lastly, whether the parcel was used by the applicant for exempt purposes during the 1995

assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant is a veterans' organization. It is also determined that the applicant owned the parcel during all of the 1995 year. Finally, it is determined that the applicant did not use the parcel for civic, patriotic, and charitable purposes during the 1995 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that Ogle County Parcel Index Number 18-16-04-254-003 did not qualify for a property tax exemption for the 1995 assessment year was established by the admission into evidence of Department's Exhibit Nos. 1 through 5. (Tr. p. 11)

2. On August 31, 1995, the Department received a property tax exemption application from the Ogle County Board of Review for Permanent Parcel Index Number 18-16-04-254-003. The applicant had submitted the request to the board asking for an exemption for the 1995 assessment year. There was no recommendation made to the Department because the board was "unsure regarding [the] 'exclusively used for charitable purposes'" language found at 35 ILCS 200/15-145. (Dept. Grp. Ex. No. 2)

3. On December 14, 1995, the Department denied the requested exemption finding that the property was not in exempt use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing held at the Department's offices in Chicago, Illinois, on August 25, 1997, was pursuant to that request. (Dept. Ex. No. 5)

6. The subject parcel is 3.42 acres and is located at 1310 W. Washington Street, Oregon, Illinois. It contains a 6120 square foot one-story building. (Dept. Ex. No. 1)

7. The applicant acquired the subject parcel by three warranty deeds from the same grantors dated December 27, 1951, April 24, 1952, and March 17, 1965. (Dept. Ex. No. 2)

8. The Illinois Secretary of State issued an amendment to the applicant's not for profit articles of incorporation on April 15, 1970. The amendment changed the name of the organization and changed the purpose clause to state:

The purposes and objects for which this corporation is organized shall be to contribute and participate in charitable, educational and patriotic projects, to provide and maintain educational, patriotic and recreational facilities for charitable, educational and patriotic organizations, including the members of Oregon Post 8739 Veterans of Foreign Wars of the United States, its Auxiliary, subsidiary, allied and affiliated organizations and to participate in various fund-raising activities for organized charities and donate the use of its facilities and funds to deserving and recognized charities; not, however, including the care of neglected or dependent children. (Applicant's Ex. No. 1)

9. For the fiscal year ending June 30, 1995, the applicant had assets and liabilities of \$163,280.15<sup>1</sup>. (Applicant's Ex. No. 5)

10. The applicant made donations and contributions to other entities in their fiscal year ending June 30, 1995, in the amount of \$58,741.00. (Tr. p. 21)

11. The year-to-date amount of income that the applicant derived from sales on the subject property for the period ending June 30, 1995, was \$186,733.02<sup>2</sup>. The total cost of sales was \$76,213.59 for a gross profit of \$110,559.43. (Tr. p. 26; Applicant's Ex. No. 5)

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<sup>1</sup>. The asset portion of the balance sheet stated:

Current Assets		
petty cash - pull-tabs	\$	200.00
petty cash		275.00
cash in bank		5,536.08
cash - Rock River bank - Bar		532.40
cash - pull-tab account	1,541.06	
cash - building fund		149.66
inventory		5,365.71
inventory - kitchen		2,565.80
inventory flags	240.00	
inventory - pull-tabs		370.65
Total Current Assets		\$ 16,776.36
Net Fixed Assets	\$	146,503.79
Total Assets	\$	163,288.15

<sup>2</sup>. The year-to-date amount shown on the Income Statement for the period ending June 30, 1995, reported the income from sales as follows:

12. The building on the parcel in question is only open for meals to the members of the applicant and their guests. The bar is only open to members of the applicant and their guests. (Tr. p. 43)

13. Members of the applicant and their families may use the subject property for wedding receptions. The applicant has a written rental policy and charges \$200.00 for the lease of the building. (Tr. pp. 46-48)

14. The income statement for the applicant for the 1995 fiscal year showed a net profit of \$16,509.17. (Applicant's Ex. No. 5; Tr. p. 29)

15. The applicant submitted a balance sheet for 1994. When it was explained that the taxable year in question was 1995, the applicant withdrew Exhibit No. 4. (Tr. p. 28)

16. During 1995, the applicant used the subject parcel and building for funerals for veterans and their families, meetings of the sixth district V.F.W., a Northern Illinois mayor's meeting, Rotary Golf Play Day planning committee meetings, Oregon Fire Department meetings, meetings of the Oregon Lions Club, Oregon Jaycees, Ogle County Pheasants Forever, Project Oregon-Oregon CCI, Autumn on Parade committee, V.F.W. Ladies Auxiliary Blood Drive, and V.F.W. Post 8739 & Ladies Auxiliary monthly fundraising activities, all at no charge to the participants. (Applicant's Ex. Nos. 3 & 7)

17. The applicant donates flags to schools and other entities in the community; participates in local parades; presents colors at all home football games; holds Memorial and Veterans' Day services; donates prizes for local events; provides financial support for destitute veterans; holds bicycle safety classes; distributes drug, fire, and home safety pamphlets; donates

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sales - bar	\$	83,437.45
sales - kitchen		39,822.51
sales - pool table		1,761.70
sales tax received		7,703.76
rents and services		1,050.00
donations received		11,124.10
pull-tab receipts	40,717.50	
misc. income		1,156.00

grave markers and places flags on deceased veterans' graves; prepares and distributes food baskets to needy families; and brings a helicopter for display purposes for a yearly local celebration, Autumn on Parade. (Applicant's Ex. No. 7; Tr. pp. 19-20)

18. The applicant employs Harry Unzicker as the bar manager and pays him \$250.00 every two weeks for those duties. (Tr. p. 39)

19. The applicant also employs a full time cook. Three bartenders, two additional cooks, and two waitresses are employed part-time by the applicant on the parcel in question. (Tr. pp. 42-43)

#### Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the authority granted by the Constitution, the legislature has enacted statutory exemptions from property tax. The provision at issue is found at 35 ILCS 200/15-145 and states:

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in

ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

There is no dispute that the applicant is a veterans' organization. Therefore, the question before me is whether the use of the subject parcel in 1995 was patriotic, civic, and charitable.

In the case of North Shore Post No. 21 v. Korzen, 38 Ill.2d 231 (1967), the Supreme Court of Illinois held that the predecessor statute to 35 ILCS 200/15-145<sup>3</sup> was constitutional and that the provision granting an exemption to a veterans' organization required the organization's use of the property to encompass all three of the required uses: civic, patriotic, and charitable<sup>4</sup>.

The Court went on to hold that North Shore Post's usage of the property for its meetings, wedding receptions, meetings of various other groups, and the bar maintained on the premises primarily for members necessitated a finding by the Court that the primary use of the property was not exempt.

In this case, the applicant argues that they qualify for a property tax exemption because they participated in a number of beneficial community activities and made the building available

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3. At the time Northshore Post No. 21 was decided, the exemption for veterans organizations was found at Ill.Rev. Stat. 1963, chap. 120, par. 500.18.

4. In the discussion of the constitutionality of the statutory provision, the Court stated:

Section 19.8 exempts from taxation property of veterans' organizations which is used exclusively for "charitable patriotic *and* civic purposes". There is a presumption of constitutionality of legislation once it becomes the law of the State, and all reasonable doubts must be resolved in its favor. (*Locust Grove Cemetery Ass'n v. Rose*, 16 Ill.2d 132; *People v. Illinois Toll Highway Com.*, 3 Ill.2d 218.) It is our view that the legislature, in enumerating the purposes for which property must be used to render it exempt, meant to use the conjunction "and" in its ordinary sense rather than as a disjunctive conjunction which would permit any one of the three stated uses as being sufficient to exempt the property from tax. Therefore, in order for property of veterans' organizations to be exempted from taxation it must be shown not only that the property was used exclusively for charitable purposes, but also that such use was patriotic and civic. This is not a broader exemption than is permitted by the constitution, rather it is more restrictive, therefore section 19.18 pertaining to veterans' organizations is not unconstitutional. *id.* at 233-234

at no charge to other organizations which provide services to the community. This is not the criteria necessary for granting a property tax exemption to a patriotic organization. Nor is the fact that the applicant made a large number of donations to other worthy organizations during the year in question determinative, as the applicant also asserts. The applicant must establish that the use of the property is for charitable, civic, and patriotic purposes.

In its brief, the applicant is correct in citing the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968) for guidance in determining what is charitable. In that case, the Illinois Supreme Court set forth six non-restrictive guidelines to be used in determining whether or not an organization is charitable or its use of property is charitable. The six guidelines are as follows:

- (1) The benefits derived are for an indefinite number of persons;
- (2) The organization has no capital, capital stock or shareholders, and does not profit from the enterprise;
- (3) Funds are derived mainly from private and public charity, and are held in trust for the objectives and purposes expressed in its charter;
- (4) Charity is dispensed to all who need and apply for it;
- (5) No obstacles are placed in the way of those seeking the benefits; and
- (6) The primary use of the property is for charitable purposes.

The applicant herein obtains the majority of its income from pull-tabs and the operation of its restaurant and bar. Therefore, the applicant does not fulfill the third criteria. The fact that the applicant has no capital, capital stock or shareholders, does not in and of itself warrant the granting of a property tax exemption. The applicant has not established that they meet criteria one, four, five, and six. There is no dispute that the applicant's endeavors are certainly commendable and benefit the community.

I have been unable to distinguish the activities of the applicant from the activities of the applicant in North Shore Post No. 21. Both entities presented awards to schools, participated in

veterans activities, and sponsored various community activities. In fact, both entities had a bar and used the property for meetings, both business and social. Both premises were used for wedding receptions and other social events. In fact, in North Shore Post No. 21 the Court enumerated uses of the property that it found were not *per se* patriotic and charitable. The Court stated:

Plaintiff has not shown, however, that the primary use of the premises was in furtherance of these charitable purposes. The record shows that the premises are used primarily for the following purposes: meetings, both business and social, of the plaintiff and its various auxiliaries; wedding receptions of members of the Post and third parties; dinners and social parties for plaintiff and its auxiliaries; meetings of boy scout troops; meetings of other veterans organizations for a rental donation of \$15; a bar is maintained primarily for members; pool and billiard facilities are maintained for members and their guests; . . . *id.* at 235

I find that the use of the property in question virtually mirrors the uses of the property at North Shore Post 21. I therefore find, as the Court did in North Shore Post No. 21, that the applicant has failed to show that the activities it conducts satisfy the three-prong test of charitable, civic, and patriotic usage that the statute requires.

I find that North Shore Post No. 21 is the controlling case law regarding the statutory language at issue and that the applicant has failed its burden of proof to qualify for exemption.

I recommend that Ogle County Parcel Index Number 18-16-04-254-003 remain on the tax rolls for the 1995 assessment year.

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Barbara S. Rowe  
Administrative Law Judge

April 8, 1998